

UNIVERSITY OF ALBANY LIBRARY

NOV 6 1922

MINUTES

of a

CONFERENCE

held at

FIFTY-SIX WEST FORTY-FIFTH STREET

in offices of

THE AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,

Wednesday, September 20, 1922.

New York City.

RECEIVED OF THE
FEB 1 1924



AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
FIFTY SIX WEST FORTY FIFTH STREET
NEW YORK CITY



GENERAL COUNSEL
NATHAN BURKAN
GENERAL MANAGER
J. C. ROSENTHAL

PHONE VANDERBILT 4326-7

October 10th, 1922.

ALL LICENSED BROADCASTING STATIONS

We enclose herewith, for your information, a copy of the Minutes of a Conference held at this office on September 20th, attended by representative interests, a study of which will make clear to the proprietors of broadcasting stations the position of this Society with respect to the public performance of copyrighted musical compositions by radio broadcasting.

The date of the second conference to be held has been fixed at October 26th, and in the meantime copies of these Minutes are being sent to all licensed broadcasting stations, so that the proprietors thereof may have every opportunity to inform themselves of developments, and to favor us with their comment, criticism or suggestions.

The desire of this Society is to work out a solution of the problem involved, in entire justice to everyone interested, and to this end it invites all concerned to participate in the discussions. Those who cannot attend are invited to forward written comment.

In the meantime, all broadcasting stations will please take note that it is the position of this Society that an infringement of copyright occurs every time a copyrighted composition is publicly broadcasted, and all stations are invited to file applications for a temporary license permitting such public performance, pending the outcome of these negotiations.

Yours very truly,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,

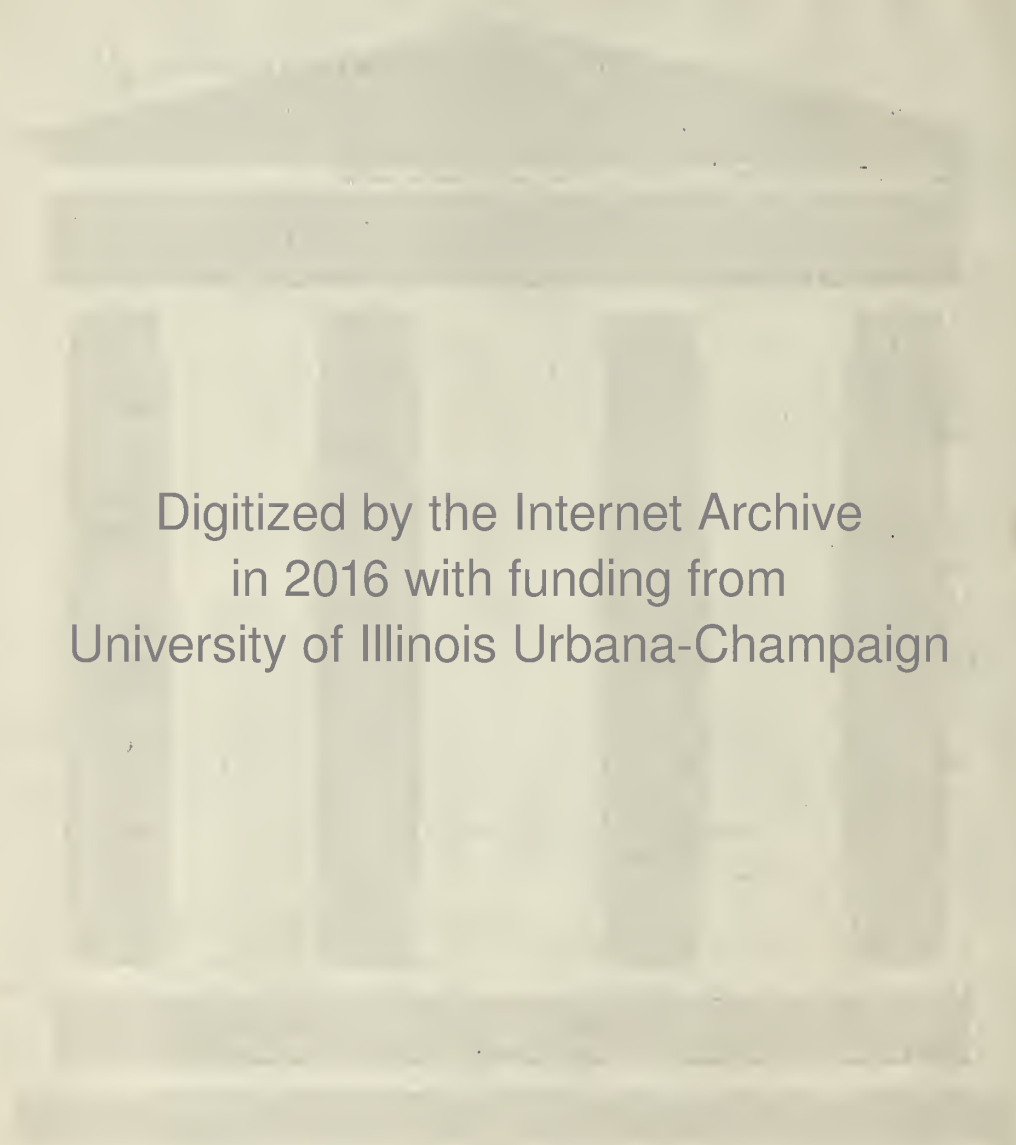
By

J. C. Rosenthal

General Manager.

Enclosure.

RECEIVED
UNIVERSITY OF ILLINOIS
JAN 10 1917



Digitized by the Internet Archive
in 2016 with funding from
University of Illinois Urbana-Champaign

65-62
1142 m

742

PRESENT.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS &
PUBLISHERS

Mr. Nathan Burkan, General Counsel
Mr. J. C. Rosenthal, General Manager

AUTHORS LEAGUE OF AMERICA

Mr. Jesse Lynch Williams, President
Mr. Eric Schuler, Secretary

MUSIC INDUSTRIES CHAMBER OF COMMERCE

Mr. Alfred L. Smith, General Manager

MUSIC PUBLISHERS ASSOCIATION OF THE UNITED
STATES

Mr. George Fischer, President
Mr. Alfred L. Smith, Secretary

MUSIC PUBLISHERS PROTECTIVE ASSOCIATION

Mr. E. C. Mills, Chairman, Executive Board

DEPARTMENT OF COMMERCE OF THE UNITED STATES
OF AMERICA

Mr. Arthur Batcheller, Radio Inspector,
2nd Dist.

AMERICAN TELEGRAPH & TELEPHONE COMPANY

Mr. A. H. Griswold
Mr. S. L. Ross
Mr. C. H. Fuller

RADIO CORPORATION OF AMERICA

Mr. J. A. White
Mr. Ira J. Adams, Counsel

GENERAL ELECTRIC COMPANY

Mr. H. E. Dunham, Counsel

Mr. M. P. Rice, in charge WSY

WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY

Mr. William H. Easton, Vice President

Mr. Calvert Townley, Assistant to the
President

Mr. C. B. Popenoe, of WJZ

G. SCHIRMER, INC.

Mr. O. G. Sonneck

NATIONAL RADIO CHAMBER OF COMMERCE

Mr. George Lewis, Secretary

Mr. E. C. MILLS, Presiding

Conference called to order at 2:30 o'clock, P. M.

MR. MILLS:

Gentlemen, the purpose for which this conference was called has been communicated to you by our circulars, the correspondence we have had with you and with the broadcasting stations of the United States, but I will now state that it is an effort to arrive, if we can, at an agreement respecting the recognition of the rights of copyright proprietors with respect to the public performance, by radio broadcasting, of their copyrighted works.

The position of the American Society of Composers, Authors and Publishers, which summoned this conference; and we assume it to be as well the position of other copyright proprietors, is that broadcasting by radio constitutes a public performance, in effect, fact, and within the meaning of the law.

The legal aspects of the question will be discussed by our counsel, Mr. Burkan, who is here present.

We want to say at the opening of this conference, that we have been very pleased with the open-minded, fair attitude that has been taken towards the proposition generally, by nearly all the radio interests with whom we have so far taken it up, there having been but few exceptions in which opposition has been extended to the recognition of our rights.

What we want to do today, if we can, is to arrive at a conclusion as to whether:

First—These rights will be recognized by you gentlemen who control radio, and

Second—What form the recognition will take, from whom we shall collect fees for the right to publicly perform copyrighted musical compositions by

radio broadcasting, and what the amount of those fees shall be.

I think, with that statement, that I would now like to hear from any of the gentlemen here representing any radio interests, as to what their reaction generally is to this proposition. Let us, at this point, understand that nobody is going to be committed by what he may say, but if we jointly discuss the proposition generally we will soon bring out the moot questions.

MR. BURKAN:

Nobody is to be bound by any statement that is made. This is a general and informal conference and discussion in which everyone may freely express his views and exchange information.

Does anyone here want to argue as to the legal aspects of the situation? I assume there are some lawyers here that would like to discuss that branch of the subject first.

MR. ADAMS:

Mr. Chairman, I don't think that is advisable. We came here to listen more than anything else; to get your proposition, to see what you thought was equitable, what you wanted, and so on, and then to make a report on it and see whether our people would be willing to accept some program that you proposed.

MR. MILLS:

Very briefly, gentlemen, here is what we want: We want from this new industry, which has taken the country by storm, and which we firmly believe is just at the threshold of its prosperity and success, fair recognition of the rights to which we

feel we are entitled in view of our creating what we consider constitutes the very foundation of radio in its popular aspects.

We know nothing about radio, we are not electricians or radio engineers. We can only visualize this from the standpoint of popular entertainment.

We believe that there are something like a million and a half radio receiving sets in use in this country. That figure may be exaggerated, and it may be understated. It is based largely on what we read in the radio trade press. The bibliography of that industry is very extensive. I think you have more magazines now published devoted exclusively to radio than are issued in behalf of any other single industry. From these magazines and periodicals we gather that there are about a million and a half receiving sets now in use.

It is entirely possible, and it seems very probable, that within the next two or three years, if the broadcasting programs are made increasingly entertaining, that there will come into use six or seven million receiving sets.

There are between six and seven million phonographs in the homes of the country. The average cost of a phonograph is around a hundred dollars. The average cost of a receiving set is something like twenty-five dollars. In comparison, and on the basis of what it costs the owner to install, it would seem that the radio set has it all over the phonograph, and if there are six million phonographs in use it seems reasonable to anticipate that there will be at least ten million receiving sets, assuming of course that all of the little present imperfections in radio will soon be overcome, that you will overcome static disturbance, interference, and that you will so perfect sending and

receiving apparatus that present imperfections will be done away with.

From these six or seven million phonographs in the homes of the country we derive very substantial revenue in the way of royalties paid to us by the manufacturers of phonograph records, for the right to mechanically reproduce copyrighted musical compositions.

There are between six and seven hundred thousand player-pianos in the homes of this country, using music rolls, upon which we are also paid royalties by the manufacturers thereof for the right to mechanically reproduce copyrighted musical compositions.

There are also now in the homes of the country, probably five or six million pianos, organs and other musical instruments. Practically all of these use sheet music, and from the sales of printed sheet music we derive revenue.

To just the extent that radio enters into the entertaining activities of the home, replacing phonograph records, player rolls and sheet music, to just that extent is our revenue affected in one way.

Now, we are not taking the position that radio is going to replace the phonograph; it never will. Nor, that it is going to put the player piano out of business, because it never will; and likewise, it will never replace the sales of sheet music. It will affect all these things, and consequently our revenue from such sources, to just the extent that the time available to the family for entertainment is devoted to radio instead of these other pleasures, and to that extent only.

Mr. Yates, in a recent edition of the radio supplement to the New York Evening Mail, made the prediction that, notwithstanding the present weak-

nesses and imperfections of radio, there would be at least one hundred million dollars' worth of radio receiving apparatus sold during the coming winter. I do not know, and perhaps none of us know who is or is not an authority to forecast what will happen in this respect, but Mr. Yates seems to be as much an authority as anyone else on this question. At least he has been accepted as such by an important metropolitan newspaper, and I imagine he must have known what he was talking about before he was permitted to cover its front pages with radio matter.

Assuming that there will be a hundred million dollars' worth of this apparatus sold during the coming winter, is it fair to say that a net profit of twenty-five million dollars will flow from that sale? I think so. A twenty-five million dollar profit is possible to an industry that succeeds, in its popular phases, without which the apparatus would not be sold in such volume or anything like it, ninety per cent. because of the material which we furnish.

We do not believe, though you may disagree, that radio receiving sets would have ever been installed to such extent as they have been, had there been available for the possessors of those sets only such material as lectures, market and weather reports, educational propaganda, and things of that sort.

We believe that the dominant influence toward the purchase of the major portion of this apparatus has been the availability of music, entertainment, and we believe that conclusion to be soundly founded.

Our position is not hostile to radio. We are not going to put radio out of business. We do not flatter ourselves that we could, and I think we are

just decent enough not to want it to go out of business, no matter what may happen, because we consider it a great thing for the American people, with wonderful potential possibilities for the dissemination of information. It is going to do away with isolation, and it is going to do lots of other things.

But, we want from radio a fair share of what should be ours, because of what we consider to be our very substantial contribution to its development, as a popular proposition and distinct from its commercial possibilities.

We realize that there are very great difficulties in the way of arriving at a just and fair decision as to how much should be paid and by whom it should be paid. We know that in some cases concerts are broadcasted by institutions and firms which, so far as we know, sell no radio apparatus. We know there are many people selling radio apparatus who operate no broadcasting stations. We know that broadcasting stations are operated by newspapers, colleges, municipalities, firms such as those represented here, and by the United States Government.

Many of these may claim that the stations are not operated for profit. I have refrained from discussing the legal aspects of the situation at all, but I know enough of the law relative to this matter to say to you, for the benefit of those present who are not lawyers, this much about copyright law:

The law contemplates that the copyright proprietor shall, among other exclusive rights, enjoy the exclusive and sole right of public performance.

Regardless of whether or not the performance be for profit, he enjoys those rights in what is called a dramatico-musical composition, that is, a musical

composition that is any part of a dramatic or consecutive story, whether it be an opera, a musical comedy, or any other style of consecutive story.

As to the so-called popular musical composition, or a composition which is distinct and separate and not in any way a part of a consecutive plot or story, the copyright proprietor enjoys the exclusive right to publicly perform for profit.

We take the position that music is publicly performed when it is broadcasted, and further, that the purpose of the performance is profit. Under the law, no performance for profit may be undertaken without infringing our copyright, unless the performance is licensed and authorized by the proprietor of the copyright.

We think as to the law that we will have no difficulty in establishing and maintaining this position. We would much prefer not to rest however, upon technical legal rights, but rather to depend upon your fairness and willingness to recognize what we deem to be just and fair rights. We believe that you will willingly contribute to the authors and composers of this country through a fair and frank recognition of their rights, from the very beginning, not only because it is right and fair that you should do so, but as well because you are yourselves going to depend in a constantly increasing measure upon the product of these men for the ultimate success of your broadcasting enterprises, if these enterprises are in turn to depend upon broadcasted entertainment.

I might say at this point that these rights are now recognized, and license fees are paid to us by more than seven thousand establishments in the United States, including theatres, dance halls, cabarets, restaurants, excursion boats, etcetera, and enterprises of that sort, for the right to publicly perform copyrighted music for profit.

Every phase of the law on this particular subject has been tested out, except as to radio broadcasting, which is a development so recent that there has, as yet, been no opportunity to test it out. But we suggest and we believe that the radio interests of the country will recognize the rights of these men without any testing out of those rights, because they seem so manifestly and clearly their just rights.

What we would like principally now to discuss in this conference with you—and we would like it to be informal, and in connection with which we would like it understood that no man or his firm is committed to what may be said—is the most practical ways and means for recognizing and compensating the claim we are about to make.

If there is anything I should have said and did not, or any point as to our position which I have not made clear, I would like to have you ask me any questions, and I will try to answer them.

MR. GRISWOLD: A.T.T

There is one point Mr. Mills, for my information. I am not a lawyer. Is it your position, and that of your associates, that having received a royalty on music that is recorded on a phonograph record or a player roll, for the use of a certain phonograph or piano, and so on, that if that phonograph or piano with that roll or record is played in a broadcasting station, you would then expect additional royalties?

MR. MILLS: MPRA

Absolutely. I will explain that point. I want to state it plainly. The gentleman is not a lawyer, neither am I. Counsel is present and will correct

me if I am wrong. The royalty that we receive under the law, from the manufacturer of a phonograph record, for the right to mechanically reproduce a copyrighted musical composition, is in consideration of a right to manufacture, not a right to publicly perform; and the right to manufacture does not include the right to publicly perform. That particular point of law has been threshed out, and in the Act of 1909, it is specifically provided that the payment of royalty for the right to manufacture a record, does not free that product from further contribution to the copyright proprietor if it be utilized in whole or in part to publicly perform, for profit, the copyrighted composition which it mechanically reproduces. Permit me to repeat, the law clearly contemplates that payment of mechanical royalty by the record manufacturer does not free the record for public performance for profit.

MR. EASTON: *W.F.*

May I talk on another subject? A radio is put in a restaurant. If it has been installed there, and is used to play a broadcasted program for the diners, is there liability then for a third payment?

MR. MILLS:

Certainly. This would constitute a public performance for profit.

MR. EASTON:

What are the broadcasting stations doing?

MR. MILLS:

Are you not publicly performing for profit?

MR. EASTON:

It seems to me that if you were paid once for public performance on that composition, that two payments should not be made for the same rights.

MR. MILLS:

There wouldn't, under such circumstances, be two payments made for the same service. It is not the same service. The broadcasted song, sent out from the station, would probably be listened to by any number of people, as happened to be using their receiving sets at the time. The restaurant would be equal to one of these people. The restaurant, its proprietor or owner, could listen in and enjoy the use of his receiving set without the payment of any fee, all he wanted to, but the moment he makes of that set and of the service he receives over it a vehicle for the earning of profit then he is, through a mechanical device, publicly performing the music for profit and the copyright proprietor is accordingly entitled to receive revenue. In the case you cite, the restaurant proprietor is not receiving or using the music for his individual pleasure and enjoyment, but is making of it a part of the service rendered by his establishment to its patrons, just the same as the food served, the linen furnished, and so on. All of this service, including the music, is paid for by the diners, or patrons of the establishment.

MR. EASTON:

Upon what basis are fees now collected?

MR. MILLS:

In the case of theatres, ten cents per seat per annum; thus a thousand-seat theatre pays a fee of

one hundred dollars a year; in the case of restaurants, dance halls, cabarets, and so on, the fees range from fifty to one hundred and eighty dollars a year.

MR. EASTON:

To whom does this money that you collect go?

MR. MILLS:

It is paid to the American Society of Composers, Authors and Publishers.

MR. EASTON:

Just what does the proprietor who pays the money receive?

MR. MILLS:

The unrestricted right to publicly perform, for profit, in his establishment or place of business, any or all of the compositions now copyrighted, or that may during the life of his license be copyrighted, by members of this Society.

MR. EASTON:

What disposition is made by the Society then, of the money which it collects?

MR. MILLS:

It is paid, at quarterly intervals, in the form of dividends, to the composers, authors and publishers who are members of this Society. The Society is an absolutely non-profit organization, it declares and pays one hundred per cent. of its net revenue to its members.

Mr. Burkan has just very properly suggested that I should make clear to you gentlemen at this point, just what the American Society of Composers, Authors and Publishers is.

It came into existence about eight years ago, through the voluntary association of a group of composers, authors and publishers. Its purpose and objects are varied, including not only the protection of the copyrights of its members from any and all infringements, but as well the upbuilding and development of the art of music in America.

To become a member of the Society, the applicant must have qualified in his particular line of endeavor, he must have been a composer or publisher of successful musical compositions. Amateurs, untried and unproven writers, unknown and unrecognized publishers, are not admitted to membership. Such men as Victor Herbert, John Philip Sousa, Irving Berlin, Harry Von Tilzer—many of the best known composers and authors in the United States are members of the Society. So also are some forty of the leading and best known publishers.

The Society is bona fide and just what it represents itself to be, an organization of composers, authors and publishers.

It is affiliated with European societies of like character, in England, Italy and elsewhere, and let me say that in European countries, these so-called petty rights, or public performing rights in copyright have been recognized and compensated for a much longer period and more stringently than in this country. We hope to get constantly greater and firmer recognition in this country for them, to the end that the arts of literature and music, in short our culture, be encouraged

to its greatest possible development. France and its capital Paris are today recognized as the cultural centers of the civilized world, and it has achieved that distinction more because of the recognition it has given to the rights of artists—composers, authors—brain workers if you please—through generous compensation arranged for those who developed unusual talent. We want to be just a small factor perhaps, in bringing to America, through operation of like policies, an enhanced standing. There is no better way to do it than to liberally and generously reward those who make of these arts a life work. This is, of course, somewhat away from the practical aspects of the matter which we are met here to discuss, but as good citizens, I think we can well devote some thought to it.

MR. GRISWOLD: 767

Mr. Mills, what proportion of the total authors and composers are represented in your membership? Are there other similar organizations in the United States?

MR. MILLS:

There are no other similar organizations in the United States. I cannot tell you what proportion of authors and composers are represented in the membership of the Society, because if there are fifty million adults in this country, probably forty nine million of them deem themselves authors and composers.

MR. GRISWOLD:

Mr. Mills, can you make them eligible to membership in the Society?

MR. MILLS:

No, sir. Of the recognized, established, authors, composers and publishers in the so-called "popular" field, probably ninety per cent. or more belong to the Society. Of those in what is known as the standard or "high class" field, a much smaller percentage, negligible in fact, though I am not sufficiently familiar with that field to discuss it intelligently.

MR. BURKAN: *ASAP*

Mr. Mills, there may be some confusion as to the meaning of the term "high class" and at this point, I would like to interject:

Mr. Mills is now trying to distinguish between the so-called popular song writers, and the writers of standard or high class music. I dare say that as to the so-called popular writers, this organization represents ninety per cent. of them. Have you the list of writers Mr. Rosenthal?

MR. ROSENTHAL: *ASAP*

Yes, I have it here.

MR. BURKAN: *ASAP*

I would like to repeat, that there are at least ninety per cent. of the popular writers in the membership of the Society, but comparatively few of the men who write symphonic and orchestral works, but I do not think that you generally broadcast works of that character, and the writers of such works are comparatively few in number. America has not, as yet, produced a great many. You will find them in France, Germany and Italy, but very few in this country. We have, I think,

but one symphonic writer in the Society, Mr. Victor Herbert, and he is a member because of his popular works, works that appeal to the masses of people, and the kind of works that I understand are being principally broadcasted. I make the statement, and do not believe that it can be successfully challenged, that the Society represents ninety per cent. of the men who write works that appeal to the general populace.

I would like, at this point, to say a word or two respecting the origin of the Society.

From 1856, American authors enjoyed the right of public performance of their operatic works, but there never was any real necessity for an organization like this until after the introduction of the motion picture as a form of popular entertainment.

It was found that the proprietors of the motion picture theatres could not give any interesting exhibition of their pictures without an accompaniment of music. Prior to the advent of motion pictures as a popular form of entertainment, most of the American writers wrote their compositions for public performance upon the legitimate and the operatic stage, and these authors received a percentage of the gross receipts, that is, for every dollar that was paid for admission to a theatre where a performance of an opera or musical comedy was given, the author received three per cent. The fixed royalty was six per cent., three per cent. payable to the author, that is, the man who wrote the lyrics, or words, of the songs, and three per cent. to the composer of the music, or melody. So, these men received a very substantial compensation for their efforts.

Everything went along swimmingly until there came the large motion picture theatres that rivalled

very formidably the regular, legitimate theatre. Competition became very keen and the result was that the revenue of these authors began to fall off, caused, we claim, by the circumstance that every large theatre presenting motion pictures took a certain portion of the patronage from the legitimate house. Exhibitors were earning large revenues, tremendous sums of money, through the works of the American composers, and the gentlemen who operated these theatres conceded that the value of the music to the program was forty per cent. In other words, the exhibition value of the picture as part of the evening's entertainment was sixty per cent., and that of the music forty per cent., but there was no compensation for the service rendered by the men who contributed this forty per cent. of entertaining value.

When the individual author attempted to collect his royalties from these gentlemen, he failed, for the reason that in every city these owners of theatres organized a combination of some sort, called Chambers of Commerce, Exhibitors' Leagues, and so on, and when the small composer came along to make a demand for recognition, he was resisted by the paid lawyer of a combination of a hundred or two hundred motion picture exhibitors, and after an unsuccessful attempt on the part of these individual authors to assert their rights and enforce them, they realized that there was only one thing to do—and that was to form an organization combining all the principal writers of poetry and verses of music, and of the composers thereof, and they then organized this American Society of Composers, Authors and Publishers.

These men tried by every possible means to secure recognition of their rights. The motion pic-

ture exhibitors resisted, and the result was that litigation was commenced, and the Supreme Court of the United States finally recognized the rights of these authors. Attempts were then made to disorganize this organization on the ground that it violated the Sherman and other anti-trust acts, and they failed.

The Courts have held that this Society is formed for the legitimate and commendable purpose of affording protection to men whose rights would be habitually infringed if the Society did not exist, since no single man would be strong enough to enforce his rights for royalties as against the groups of theatre owners.

Therefore, these authors and composers have successfully vindicated not only their original rights, but as well their right to organization for the protection of them.

The forerunner of this Society was the French Society, which has been in operation more than fifty years and works along the same lines as we. In other words, all members contribute to the Society the performing rights in all of their works, and the Society in turn grants to various persons the right to publicly perform them, for a fixed compensation, which goes into the treasury of the Society and from time to time is distributed amongst its members according to their different classifications as established by their own committees.

Affiliated with this Society are the English, and Italian societies. The French society is not affiliated, though negotiations were in progress looking to affiliation.

But, it should be remembered, when this Society issues its license there is covered not only the works

of its American members, but as well the compositions of the members of its European affiliations, and this license is available, in the case for instance of a theatre, for the sum of ten cents per seat per annum.

The proprietor does not have to deal with many different men, but with one organization instead, and there is probably available, in the catalog of the Society, more than a million compositions, of all sorts, types and varieties.

Some two hundred and sixty-eight composers and authors are members of the Society; they are a majority of the men who, in this country, create musical works. That is their only vocation, and as Mr. Mills has properly stated, they are men who have proven their qualification before they were admitted to membership.

In other words, it is not a harum-scarum membership; and, furthermore, the profits of the Society go only to those members. No outsiders or unqualified persons are admitted. The only persons who may join and participate are authors, composers and publishers who have been recognized as such through the prominence gained by their works.

MR. GRISWOLD: *A. T. T.*

A point right there for information again. I sort of understood that musical propositions were handled like a book; that a man writes something and goes to a publisher and arranges with the publisher to get it out, and the publisher thereafter handles it. Now, what proportion of publishers are in on this thing?

MR. BURKAN: *756-18*

Now, as a matter of fact, of the so-called publishers of popular music, I, again, would say that there are ninety per cent., at least ninety per cent., members of this Society. Thirty-two recognized publishers are members, namely:

IRVING BERLIN, Incorporated,
 BROADWAY MUSIC CORPORATION,
 CHAPPELL-HARMS, Incorporated,
 ENOCH & SONS,
 LEO FEIST, Incorporated,
 FRED FISHER, Incorporated,
 FORSTER MUSIC PUBLISHER, Incorporated,
 GOODMAN AND ROSE, Incorporated,
 ESTATE OF HAMILTON S. GORDON,
 HANDY BROTHERS MUSIC COMPANY,
 Inc.,
 T. B. HARMS COMPANY, Inc.,
 HARMS, Incorporated,
 CHARLES K. HARRIS,
 KENDIS-BROCKMAN MUSIC COMPANY,
 Inc.,
 EDWARD B. MARKS MUSIC COMPANY,
 McKINLEY MUSIC COMPANY, Inc.,
 JACK MILLS, Incorporated,
 E. T. PAULL MUSIC COMPANY,
 JEROME H. REMICK & COMPANY,
 RICHMOND-ROBBINS, Inc.,
 G. RICORDI & COMPANY, Inc.,
 WILL ROSSITER,
 SHAPIRO, BERNSTEIN & COMPANY, Inc.,
 SKIDMORE MUSIC COMPANY, Inc.,
 STARK & COWAN, Incorporated,
 TAMA MUSIC PUBLISHING COMPANY,

TRIANGLE MUSIC PUBLISHING COMPANY,
 VAN ALSTYNE & CURTIS, Incorporated,
 VICTORIA PUBLISHING COMPANY, Inc.,
 HARRY VON TILZER MUSIC PUBLISHING CO.,
 WATERSON, BERLIN & SNYDER COMPANY,
 M. WITMARK & SONS.

These are all American firms, and represent easily ninety per cent. of those which publish popular music in this country.

Now, as to the so-called standard publishers, those who specialize in what is called high class music, of this type are some of those which I have named, as for instance, G. Ricordi & Co., which publishes Puccini's works. Puccini is an Italian composer whose works enjoy a very wide vogue in this country. By virtue, for instance, of our Italian affiliation, we control performing rights of many other high class compositions, such as those of Mascagni, and the great Italian composers of the past and present.

Do not forget that a great many of the standard publishers are reproducing works that are in the public domain because we had no copyright relations with foreign countries until 1891, and because before a work may become classical the author must apparently be dead twenty years or so, if that's what you are interested in.

MR. GRISWOLD:

What I was getting at was this: What percentage, in the final analysis, of the total music that we use, is really represented by your Society?

MR. BURKAN: ASCAP

Ninety per cent.

MR. GRISWOLD:

And what is represented by others?

MR. MILLS: NPPA

Let me answer this gentleman. Perhaps I may help to clear up this point. I hope so. Music that is not copyrighted, or not entitled to copyright protection, and this includes a very great amount of music, does not, under the law come within any restrictions as to public performance, or any other use which may be made of it. Of such music there is a very great amount in the so-called standard class. Of it, there is also, but a correspondingly much less quantity, in the popular class.

Of that in the standard class it is true that a considerable amount is published by firms which do not belong to the Society, but it is also true that those firms publish a great amount of music that is copyrighted and subject to all the protection accorded copyrights.

Now the point to make clear here to Mr. Griswold and these gentlemen, is that in our opinion the major portion of the music which they broadcast is copyrighted music; that much of it in the high class field is represented by the Society, and practically all of it in the popular field.

It should be remembered that as to what is called production music, and here apparently is still another class of composition, the Society also represents practically one hundred per cent. I refer now to dramatico-musical compositions, such as

numbers from theatrical productions like the Follies, Scandals, Gingham Girl, and such shows.

MR. GRISWOLD:

What I was getting at is this: It is not the desire of any of us to evade the law. We are here to learn what the law is and find out about it. We want to know, of course, how many of these various groups there are, and if the law is that we should pay royalties, to how many different groups will we have to pay them?

MR. MILLS:

Let me say this to you very frankly. Not all publishers, and not all authors and composers are members of the Society. Its catalog, however, is of such importance, is of such necessity to those who publicly present music for entertaining purposes, for those that make their living furnishing popular and other entertainment of which music is an essential part, that more than seven thousand institutions in the United States are paying license fees for the privilege of publicly performing that catalog. I want to say with equal frankness that there is an enormous, a huge catalog not controlled by the Society, and so far as we know no restraint is placed upon its public performance by the owners of such copyrights as subsist in it. That catalog, outside the control of the Society, is available, so far as we know, for your unlimited and unrestricted use, along with thousands of non-copyright compositions of which no one controls any performing rights.

MR. GRISWOLD:

The law however, as we understand it, is that we would be amenable to your group for one set

or catalog of music, and to various individual proprietors for other music?

MR. MILLS:

Exactly. Provided, however, that these others who have not heretofore, and are not now, demanding protection of their copyrights against public performance without license, should now commence to do so.

A QUESTION:

Mr. Mills, you doubtless notice the programs as they are published in the papers. What percentage of those programs is included in the copyrights coming under your control?

MR. MILLS:

Probably not more, and I think certainly not less than fifty per cent., although I have made no accurate study on this point. I think we may safely say that of the time spent broadcasting music, at least half is given to so-called popular and jazz music. Of such music we represent, as has been stated, more than ninety per cent. Of the other half of your musical program, which we will say is of standard or high class music, the Society controls a minor portion only. As to such foreign works as are performed and which are subject to copyright, we control say, forty per cent.

However, I ask your consideration here of the point of actual entertaining value. Popular or jazz music, broadcasted, suffers not nearly as much as high class music. The latter requires for proper appreciation a trained, educated musical sense, hence the number of those entertained by this class of material is considerably less than those enjoy-

ing popular music, which requires but an ear attuned to simple harmonies, pleasing melodies. In the practical operation of broadcasting stations it seems very very difficult to give a satisfactory rendition of a high class number, some of them we hear here on our own set are execrable, whereas the popular tune does not suffer so in transmission. Played in the room or auditorium where an audience is present, high class music is difficult of satisfactory rendition; it loses much in radio transmission, and some of it becomes atrocious.

Of the two classes of music the popular has much the greater audience. We control ninety per cent. of the popular music, a minor proportion of the high class.

We have read your programs as printed in the papers. It is our impression from them, and from our own listening in here, that you play much more popular music than of any other class. The facts however, should be easy of ascertainment.

MR. FISCHER:

Mr. Chairman, it is your opinion, is it not, that most, if not nearly all, of the music that is broadcasted, is subject to the same protection?

MR. MILLS:

Yes sir. Let me make this point. We notice for example, in your programs, that you are going to play some high class number, "Die Walkure" for instance; you announce it and who or what is going to render it. This is say item one of your program. Then item two is simply headed "Popular Selections" and let me say that covers a multitude of sins, for under it you play eight to a dozen, and sometimes more, compositions. We know what

we are talking about on this point, for we have had a stenographer sit here at our own receiving set and check programs rendered against those as published in the papers. Sometimes we get only a lot of code when there is supposed to be a program in the air, but then, that is one of the vicissitudes of the listener.

There are present here, Mr. George Fischer, President of the Music Publishers Association of the United States, in which organization are included practically all of the high-class publishers in this country, but they are not members of this Society: and the distinguished looking gentleman at the corner of the table there is Mr. Sonneck, of G. Schirmer, Incorporated, one of the foremost publishers of standard or high class music in this country.

MR. SONNECK:

I would like to say at this point Mr. Chairman, and disagreeing with Mr. Burkan in his previous remarks, that I do not believe a majority or anything like it, of the music in the catalogs of the standard publishers, is non-copyright; and though the firm I represent, G. Schirmer, Incorporated, is not a member of the Society, we should like it distinctly understood that in principle we are thoroughly in accord with the position the Society has taken.

A QUESTION:

But Mr. Mills, apparently these high class publishers have their own association, and if they see fit, can enforce their copyright as to public performances of their music.

UNIVERSITY OF ILLINOIS LIBRARY

NOV 6 1922

MR. MILLS:

Yes, absolutely.

A QUESTION:

Then would it be correct to say that in these two organizations you would have practically a hundred per cent. of the music that is copyrighted?

MR. MILLS:

Yes sir.

A QUESTION:

Then we would have to deal with two associations?

MR. MILLS:

I have seen this point developing for some minutes now, and perhaps I can clear it up. It is quite true that if the copyright proprietors who are not members of this Society, and there are several, some of them very important firms, decide to change their present policy and enforce their rights as to public performance, they have a perfect right to do so.

So far as we know, there has been no decision upon their part, individually or collectively, so to do. They are members of the Music Publishers Association of the United States; and some of them are also members of the Music Industries Chamber of Commerce, but neither of those organizations, as at present constituted, and under present by-laws, functions in the collection of performing rights fees, or the protection of copyrights from this angle, though either or both of them, or some new organization to be formed, might do so.

The American Society of Composers, Authors and Publishers is the only organization now in existence, which functions in this particular regard, in the United States.

MR. WHITE: *RIA*

My question was directed to this: If we are to consider a license, or apply for a license from the American Society, how many others will we have to take into consideration?

MR. MILLS:

You may have to take into consideration all of the standard publishers whose works you desire to use, individually; or they may form some separate organization to function in this matter, and request you to recognize that organization, or they might affiliate with the American Society of Composers, Authors and Publishers, in which latter event you would have but one organization to deal with.

MR. WHITE:

Or, they might not do anything?

MR. MILLS:

Exactly, they might not do anything, or they might. They would know probably, what they wanted to do. Thus far the standard publisher has taken a position somewhat different from the popular publisher. He has assumed the position that when he sells his music or orchestration, he is not interested as to the use which is subsequently made of it, as to public performance, though of course he has the same rights as other copyright proprietors, and may elect at any time to exercise them.

As a general proposition the standard composition sells at a much higher price than a popular one; the standard publisher does not undertake such an expensive campaign of exploitation as the popular publisher; he sells his orchestrations, the popular publisher gives them away; there are many material differences in the systems of operation in the two types of business, and these differences are expressed in one form by the standard publisher thus far waiving his performing rights, while the popular publisher reserves them, for many obvious reasons.

I must in justice make it clear to you though, that if, assuming our position is sustained, you desired to broadcast a number of which G. Schirmer, Incorporated, was the copyright proprietor, you might have to secure a license from that firm individually; and you might have to do likewise with Mr. Fischer in order to broadcast compositions from his catalog, and still find it necessary to secure a license from this Society. These are all possibilities, and you might as well clearly understand them.

MR. WHITE:

I have another question in mind. I do not know if it is a proper one or not. You were discussing a while ago the rate of ten cents per seat, and then you said there were about seven thousand licenses issued. What proportion of these relate to theatres?

MR. MILLS:

The question is a proper one, and we shall answer frankly all questions asked us. Mr. Rosenthal tells me that seventy per cent. of the licenses in

force are with theatres. He is the General Manager of the Society, and knows.

MR. WHITE:

About seventy per cent. are theatres?

MR. MILLS:

Yes sir, and the rest are hotels, cabarets, dance halls, and so on.

MR. WHITE:

What percentage of restaurants are subscribers?

MR. MILLS:

Of those operating cabarets, or publicly performing music, practically one hundred per cent.

MR. WHITE:

How many vaudeville theatres?

MR. MILLS:

All of those playing a regular policy of vaudeville; they are taken care of through our arrangement with the Vaudeville Managers Protective Association, which represents practically all of the recognized vaudeville theatres of the country.

MR. WHITE:

And you say that seventy per cent. of your licenses are motion picture theatres which pay you ten cents a seat. Seventy per cent. of seven thousand is forty-nine hundred. Are there that many motion picture theatres in the country?

MR. MILLS:

There are about twenty-three thousand, of which about fifteen thousand are continuously operated, six or seven days a week.

MR. SONNECK:

Speaking exclusively for G. Schirmer, Inc., I appreciate it that the Chairman supplemented the remarks of Mr. Burkan, because unintentionally his remarks may have been somewhat misleading for these gentlemen here, who are here to get information. Of course it was unintentional, and I should like to make that clear. In an affair like this one cannot remember every point. Mr. Mills has correctly stated that for instance, G. Schirmer, Inc., is not a member of this Society, and he has not stated, because of course, it is not his affair to do so, that we, until further notice, have not placed any obstacles in the way of public performance for profit of our music, but gentlemen, we recognize just as strongly as Mr. Mills and Mr. Burkan do, that we, under the law as it stands, have the right to demand fees if we see fit to do so, and in fact we believe even more strongly than Mr. Mills has expressed it, in the law giving us that right. I believe there can be absolutely no question about our rights in the matter under the law. Mr. Mills did not state, and it is only fair to supplement his remarks in that respect, that the standard publishers, and G. Schirmer, Inc., are one of them, are not antagonistic to the Society, and in fact we have had constant conferences with Mr. Mills in this very matter, but the situation from our own point of view, relative to our own material, is not yet sufficiently clarified to commit ourselves definitely, but I merely wish to state that we recognize the

principle in law that a public performance for profit, and I believe even a public performance without profit, is covered by the law in such a manner as to protect our proprietary rights in the music which we publish.

There are certain details which may come up later, and I may have again to say something, but I merely wish to say that fundamentally, as to the principle, we are in full accord with what Mr. Mills has said.

MR. BURKAN: *ASCAP*

I should like to ask Mr. Sonneck: Is it a fact that a great many of these so-called standard publishers are publishing works the copyright of which has expired?

MR. SONNECK:

It is a fact.

MR. BURKAN:

Is it a fact that a great many standard publishers are publishing works which are in the public domain, that is, works of foreign origin, that have never been entitled to protection in this country?

MR. SONNECK:

That is a fact.

MR. BURKAN:

I was correct therefore, in the statement to these gentlemen that, as to the standard publishers, a great many of their works as published, are not entitled to copyright protection?

MR. SONNECK:

Yes.

MR. SCHULER: ALA

Speaking for the Authors League of America, I want to say that as far as we are concerned, that we are also interested in this question, but from a somewhat different angle. We are, however, thoroughly in accord and support of the theory of protection of copyrighted works in the manner in which it has been expressed by Mr. Mills and Mr. Sonneck. The Authors League includes in its membership producers of copyright—material of all kinds, except composers of music. We have a few composers, but they are members mostly on other forms of artistic expression. Our membership is fifteen hundred at the present time, of which I would say there are about two hundred and fifty dramatists, about three hundred artists, and the rest of them are pretty much evenly divided among writers of various kinds, fiction, magazine writers, and so on.

Of course, the problem in connection with writing is quite different from that of the composers, because our method of getting royalty for our works is on an entirely different basis, but still, we also operated under the Copyright Law, and we also maintain the same principle that has been expressed by Mr. Mills with regard to the rights of composers.

MR. LEWIS: Not Radio

May I ask a question? Suppose we ask Irving Berlin to send us some music, he sends it, and we broadcast it. Are we liable?

MR. MILLS:

Yes.

MR. LEWIS:

In spite of the fact that the publisher has not only sent us the music, but as well perhaps, his own artists to sing it?

MR. MILLS:

Unquestionably, yes. Let us analyze this point. Irving Berlin sends you, at your request, a singer to render his songs. He also sends you perhaps, an orchestration of the composition. He does this, we will say, to advertise his composition; and to convenience you, a source through which he may perhaps, gain additional advertising, but that is not the main point. He is furnishing a sample of his product, something that will demonstrate it, a chance to try it out if you please. He does not thereby waive his rights to payment for its use, if you decide to use it and it comes under the restrictions of law as governing a public performance.

Let me make this point clear perhaps, in another way. When someone gives you, or you buy, a copy of the Saturday Evening Post, you do not come into ownership of the stories which it contains, you merely come into ownership of a right to read those stories for your own entertainment and edification; you own a certain number of printed pages, bound together, and imprinted upon them are the letters and combinations of letters making sentences and conveying to one able to read, the substance or intellectual material of their printed contents.

You have no right to take a story which you read in that paper, and make of its plot the scenario for a motion picture, or to adapt it as a drama, or to deliver it as a lecture, or to make any use of it in public for profit.

When you are given, or purchase, a sheet of music, you do not thereby come into ownership of the music itself, but of an imprinted paper, bearing notations or symbols which, by the musically educated mind and trained fingers may be translated, with the assistance of an instrument, into audible music; that melody then you may enjoy, and your friends may enjoy, and you may play the music when and where you will for your own entertainment and that of your family, friends, and associates. But you may not lawfully use that music in a public performance, because that is a right which was not vested in you through purchase of the sheet of music.

By purchase, gift or otherwise, possession of the printed, the physical property, does not confer ownership or control of the thought and creation of the author or composer, for any other purpose than your own enjoyment.

MR. WHITE: 12C A

Well, from a purely layman's point of view, is there no allowance on the part of the Society for the value rendered in introducing the music by radio?

MR. MILLS: 177A

I am reminded of a letter which I recently wrote the Kansas City Star, in answer to the point raised concerning the service rendered copyright proprietors through the performance of their com-

positions by radio, and the advertising of it in programs printed in the paper. As I said to them, and as I went to say to you now, frankly and courteously, don't do us favors.

I would like to digress a moment and say that I am not and never have been a publisher of music; I hardly know one note from another, and I couldn't whistle Annie Rooney. I have been connected with this industry for about three years, and the first thing I noticed was that everyone was doing the publisher favors.

The dealer in sheet music claimed that it was he that popularized music, through having it on sale in his stores, and that he should have the product at the cost of printing for that reason, and the publisher, author and composer should get his revenue from the phonograph record manufacturers, not from the dealers.

The phonograph record manufacturer set up that it was he who popularized music, by mechanically recording it and thus getting it played in record stores and in homes, and the player roll men set up the same argument, and both of them represented that they ought not to pay royalties, but that the composer, author and publisher should get his revenue from the sale of printed sheet music.

The theatrical proprietors claimed that they were the folks who popularized music, through playing it to audiences in their theatres, and that therefore they should be charged no fees for the right to publicly perform, but that instead the composer, author and publisher should look to the printed sheet music and the mechanical royalties for his revenue, and let the theatre alone.

The cabaret, with its covert charge ranging from fifty cents to two dollars, claimed to be the real popularizer of music, and on that ground sought release from the responsibility of paying license fees for the right to publicly perform, and urged that the composer, author and publisher be content with the revenue derived from mechanical royalties and sheet music sales.

Then the dance hall too, made the claim that it was there, where thousands of people were dancing, and tunes were played over and over again, that music was made popular and the demand for printed copies, records and rolls actually created.

And so on and so on, until I came early to the conclusion that here was an industry apparently, that did not contribute any service at all, but on the contrary was the recipient of an almost boundless consideration from those who existed as a result of its product, and now comes radio, and says to us that it is the source through which music is popularized.

All of these people apparently overlook that it is music, new music, a constant, steady flow of new music, that makes the profitable operation of their enterprises possible.

Without music and new music constantly, what would become of the dealer? Where would the record manufacturer be if there were nothing new to record? What would become of the cabaret that bases its covert charge upon the music and entertainment furnished, and again, new music must be supplied? Paul Whiteman couldn't today play, "My Mammy" an outstanding hit of last year, it is out of date, his audiences wouldn't stand for it.

A dance hall is just three things, a roof, a floor, and music. People have danced without roof or

floor, and will again, but they must have music, and again, new music constantly.

A motion picture theatre cannot be operated without music. Intelligent people will not sit in a silent, dark theatre and watch a flittering photoplay, unless their minds are diverted by a musical accompaniment. And so it goes.

Let me say again, frankly and courteously, please don't do us favors. We can take care of our enemies, we desire protection from our friends.

Now as to radio—what would your broadcasting stations do without music, and still again, new music, because bear in mind, it is the active and energetic propaganda in behalf of new music that is responsible in a very great measure for the continuing almost universal interest in it.

And, remember too, the quality of our music must constantly improve, and to no small extent this Society and its activities are responsible for an improvement in that quality. The best way to improve its quality is to add to the incentive to write, through adequately rewarding writers. I am happy to say that, in my opinion American popular music is head and shoulders above the average European popular song in quality, both as to lyrics and melody; and we are nearing the day when high class music, symphonic and orchestral numbers, by our own native writers, will equal any produced anywhere in the wide world. To those ends are we working, and to those ends should you support our work, for in the final result you are the gainers, those of you who make a business of presenting music to the public.

Once more I say, please don't do us favors; if the catalog of the American Society of Composers,

Authors and Publishers does not contain compositions that are vital to the success of your programs, don't play them; if they do, play them only after recognizing the rights of their proprietors, and compensating them justly.

MR. WHITE:

That is all very clear, but it does not come in the spirit of what I had in mind.

MR. MILLS:

I want it to come in that spirit, in a spirit of truthful, friendly, courteous candor and frankness. I just want you and others to know the truth—you do not popularize music. Music is popularized in one definite and specific way, and it has proven the only way, and this is true in the high class as well as in the popular field. Music is popularized ninety per cent. through being sung directly to audiences, by vaudeville artists, concert singers, song pluggers sent to various functions and gatherings by publishers, and by operatic performances and musical comedies. These other things, records, rolls, dance orchestras, yes and radio, are all contributing elements it is true, just as is the boy who whistles a tune in the street, but we know that, given a composition up to a certain standard of merit, we can make that song a hit or nearly a hit without the assistance of a single one of these elements. The theatre does not play a tune, nor does the dance hall, cabaret or restaurant; the mechanical company does not record it, and you do not broadcast it, until it has already become a hit, until the demand is already created. Don't forget that. You cannot inflict on your audiences untried material.

What they want to hear is what they have heard, and if I may digress a moment, there is a phase of radio to which I think you gentlemen cannot possibly pay too much attention at this time and in the immediate future. You cannot afford to make your stations plugging mediums for untried material, either as to the songs themselves or the talent which renders them. Just the minute your broadcasting managers, your program arrangers, permit themselves to be tools in the hands of exploiters, either of tunes or talent, just that minute your programs will grow less entertaining, and from what we hear on our set here, I should say that you are now using entirely too much amateur and untried talent to hope to entertain people who are accustomed to good vaudeville and professional singers, and it is of just such people that your radio audiences are constituted. Don't "try it on the dog," entirely too much stuff is tried on him now; you can't afford, with this infant industry of yours, to hamper its growth by any such unnecessary and shortsighted policy. Let the makers of songs make them, let there be a honest, decent, conscientious, entertaining value in what you broadcast with a design and intent of entertaining.

MR. BATCHELLER: DEPT. OF COMMERCE

We have in the United States at this time, I think, about twenty thousand licensed amateur transmitting stations, and that number will probably be increased as we are licensing in this district more than a hundred a month now. Mr. Fischer brought out a point that although these amateurs are not broadcasting stations in one sense, they would be liable under the law as to

public performance of copyrights, just the same as the other people who are broadcasting for profit, or I so understood it.

MR. MILLS:

Mr. Batcheller, as to a dramatico-musical composition, no public performance, whether for profit or not, is lawful except it be licensed or authorized by the proprietor of the copyright involved; as to an ordinary musical composition the element of profit must enter in to make unlawful its public performance.

MR. BATCHELLER:

We have promised to grant many of these licenses, subject of course, to certain restrictions as to power and so forth, but our license merely covers the operation of a transmitter; we do not license any certain type of performance. Later on these fellows will probably begin to broadcast music, some twenty or twenty-five thousand of them.

MR. MILLS:

If that creates interference with the established stations, professionally and capably administered and operated, it would be distressing indeed, and might disrupt entirely the industry, as to the matter of popular entertainment.

MR. BURKAN:

I think that situation can be covered. When they ask the Government for a license, the Government can say, "You must not violate the copyright law in your operation." It is a mis-

demeanor under the copyright Act, a violation of a United States statute, and the Government can say to these people, "You must not violate the statute" because it is an offense, not against the individual copyright proprietor, but against the United States.

MR. BATCHELLER:

What about the case where a man strung wires over a public thoroughfare, and we were asked to have his radio system removed? The use of a public thoroughfare is not something that we can control, yet the aerial unquestionably constitutes a part of the transmitting station licensed by the United States Government. We assume that the individual has the necessary authority for so arranging his wires. Neither can we interfere in any way with an installation that does not meet the requirements of the Underwriter's laws, and wouldn't we be in the same position as to the use of copyrighted music?

UNIVERSITY OF ILLINOIS LIBRARY

NOV 6 1922

MR. BURKAN:

No, because this is a statute of the United States; it is a federal matter and the person who violates that statute commits an offense against the United States, which the Government has a perfect right to forbid, and to say, in the erection and operation of a station no statute of the United States may be violated.

MR. BATCHELLER:

Do you feel that a condition of that sort should be included in the license granted?

MR. BURKAN:

Yes, sir.

MR. ROSENTHAL: *ASCAP*

We feel that it would be but reasonable and right, under Section 28 of the Copyright Act, to ask the Government to revoke the license of any station that violated the provisions of that section.

MR. BURKAN:

Let me read it to you:

"Section 28. That any person who wilfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and wilfully aid and abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the Court * * *."

Now, the Government has prosecuted infringers, where two or more men have joined together for the purpose of infringement, as being guilty of a conspiracy to violate the statute of the United States.

MR. BATCHELLER:

Mr. Chairman, an amateur does not broadcast for profit.

MR. BURKAN:

That is the question, whether or not it is for profit.

MR. MILLS:

Supposing that for the moment we eliminate from consideration the twenty-five or thirty thousand amateur stations, because I do not think they are going to be a factor in the matter we are considering. They are limited as to sending radius, they won't have talent, the finances, or the means to broadcast for profit in the commercial sense.

MR. BATCHELLER:

They will have the phonograph.

MR. MILLS:

Yes, they may have phonographs, player pianos, and records and rolls. And they may have some singers and instrumentalists, amateurs, too. But it seems to me undeniable that the Government will have a right to step in, and will step in, and see to it that the several million people who will have, in the near future installed receiving apparatus, shall have opportunity to receive, free from interference of amateur stations, intelligent, well framed, capable entertainment, educational material, lectures and so on, and to such extent as the amateur stations interfere with that sort of a service, I think the Government will find it has ample power to intervene and say, "You cannot do so and so; and while this may displease the amateurs, nevertheless, it is a principle of law and justice that the few must suffer sometimes, for the benefit of the many, and it wouldn't be fair to the many to let the few so interfere with service of the right sort to them.

We are very enthusiastic about radio, we think it has marvellous potentialities, and I think it would be a shame if it should be permitted that the pleasure and entertainment of enormous listening audiences should be interfered with simply to gratify the whims and desires of amateurs and experimenters. The broadcasting service should be put in the hands of a few who can do it right, and who will do it right, so that a maximum service can be rendered, as a matter of public service as well as entertainment.

MR. BATCHELLER:

Mr. Mills, in some cases these amateurs operate on the same wave lengths as commercial plants. Some of them have very fine stations, and their range exceeds a hundred miles.

MR. MILLS:

Has this, in the past, resulted in interference with the broadcasting of the commercial stations?

MR. BATCHELLER:

Yes, but we asked them to stop.

MR. MILLS:

I don't think the amateurs should ever be denied their reasonable rights, because there will no doubt be important contributions to the development of radio through their discoveries. Probably their enthusiastic interest has contributed as much as any other single factor to the development of radio, and I think some way will be found to take care of them and make possible a continuance of their stations and yet avoid interference with the larger work.

I think I can say, for the American Society of Composers, Authors and Publishers, that it is broad enough in its purpose and design in this matter, not to interfere with development and encouragement of the engineering instinct of the youths of the country who are experimenting with radio.

A QUESTION:

Mr. Mills, if I go into a music store and buy a phonograph record of a piece of music, the person that plays it for me plays it in the hope of selling it, and thus for profit, should he not pay you a royalty for a public performance?

MR. MILLS:

No. That is not a public performance. The dealer is demonstrating to you, and perhaps your friends if you bring them in with you, an article which he hopes to sell outright to you. He hopes to sell the physical product, and this does not constitute public performance.

A QUESTION:

It is for profit, is it not?

MR. MILLS:

Undoubtedly, but the profit is not to flow from the playing of the composition, but from the sale of the record. If you made it a practice to go in there every day to hear records demonstrated, and did not buy any; or if you took your friends in every day, and made a practice of simply being entertained by the demonstration of records, that dealer would soon stop demonstrating them to you. This, in my opinion, in no sense constitutes a pub-

lic performance within the meaning of the law, or its intent.

A QUESTION :

Mr. Mills, no one is interested in the amateur side of this matter, except the Government, so I would like to come back to the matter in hand. Mr. Burkan said that theatres paid to authors some six per cent. of gross receipts, for the use of their compositions. Did I understand correctly that was six per cent. of the gross receipts, or of the net profits?

MR. MILLS :

You refer now to the case of a musical comedy; a script or book of a show complete from opening to closing, with more or less of a continuity of plot, story and song. In such cases it is customary to pay to the author and composer a sum equal to six per cent. of the gross receipts of the show, three per cent. to the composer, and three per cent. to the author. That payment is the consideration for the right to publicly perform the script or book as a complete dramatic presentation. The individual compositions or parts of the show are not thereby released for indiscriminate public performance, if that is what you mean.

A QUESTION :

No, I just want to get the history of it.

MR. MILLS :

The arrangement in such cases is made directly between the producer of the show, and the composer and author of the book. They pay to the

composer and author directly, the fees as arranged, and do not make the payment through this Society, and their payment is for the right to produce and present the complete show, sometimes including publishing and other rights as well, depending upon the trade that is made. Sometimes the royalty is more, sometimes less; the more or less accepted figure is six per cent. of the gross amount received from admissions. When I say composer, I mean the one who composes the melody, or tune, of the songs, and by author, I mean the author of the lyrics, or poem, words, of the songs.

A QUESTION:

Can you make that a little clearer, Mr. Mills?

MR. MILLS:

Let us take, for example, the song "Listening In" from the current production of the Ziegfeld Follies. That is what we call a "production number." It is written into and as a part of the show. It is a sort of a little self-contained production within the entire production; it is staged with scenic and lighting and costuming effects, and all dressed up according to the ideas of the producer and director, and it forms a part of the continuity of the entire production.

Now, supposing the Capitol Theatre wants to perform "Listening In," just as one of the numbers on a miscellaneous program of music, the Capitol Theatre secures a right to so perform it through license obtained from this Society, in which is vested the performing rights in the individual, separate numbers of the show. But, it does not receive, nor does the Society grant a right to

perform or represent the entire show known as the "Ziegfeld Follies." Often a number will be interpolated in a production, there will be in all probability two or three numbers so interpolated in the Follies before it finishes its run, and perhaps two or three now in will be taken out; these songs cannot be publicly performed anywhere but in the Follies, except by license from this Society. As to compositions which have never been component parts of a production, such as "Dardanella" and "Margie," they are available in no case for public performance for profit, except by license of the Society.

A QUESTION :

- I think you have very clearly explained the history of musical compositions. Have you now any suggestion to make as to how you would handle radio?

MR. MILLS :

Before we would make such a suggestion, we would like to have your help in devising a system or means or method of doing this in the right and fair way. For instance, there is Westinghouse, General Electric, Radio Corporation, and concerns of that calibre, operating broadcasting stations. Why do you operate those broadcasting stations? We would like, first, to analyze that with you; what is it you seek to do when you broadcast, what is your ultimate objective?

A GENTLEMEN :

It is hard to say. We are in a sort of a chaos at the present time and we don't know where it is

going to land us. We don't know what the Government is going to do.

MR. MILLS:

In this case there are manufacturers of radio apparatus, both sending and receiving.

MR. GRISWOLD:

That is not true in the case of the American Telegraph and Telephone.

UNIVERSITY OF ILLINOIS LIBRARY

NOV 6 1922

MR. MILLS:

Eliminating for the moment American Telegraph and Telephone, to what extent do the other firms here represented control the basic patents under which practically all of this radio apparatus is manufactured?

MR. GRISWOLD:

That is debatable.

MR. MILLS:

So is all copyright debatable, as we learn from our own experience.

MR. GRISWOLD:

If you were to judge from the number of infringers on the market, you would say that we didn't control anything.

MR. MILLS:

We often face the same condition. When we see four hundred and thirty stations publicly performing copyrighted music by broadcasting, without li-

cense from the copyright proprietors, it would seem that we have no rights in it. We think your case is a clear one of publicly performing for profit, and that there is a clearly defined source of revenue, the sale of receiving apparatus.

I would like some information about newspaper plants, broadcasting stations. Do you sell them these stations, or just lease them?

MR. ADAMS: *yes*

The Radio Corporation does not sell it at all.

MR. MILLS:

Do you, Mr. Dunham (General Electric), or do you license equipment to them?

MR. DUNHAM: *G.E.*

We do not.

MR. MILLS:

Westinghouse, do you?

MR. POPENOE: *W.S.*

No.

MR. MILLS:

The Detroit News has a wonderful radio plant, the Kansas City Star has another, so has the San Francisco Examiner, and the Atlanta Constitution, and other papers. Where do they get these plants, and why do they broadcast?

MR. WHITE:

I can tell you where most of them come from. The Radio Corporation does not have a license to

sell broadcasting apparatus, it has license only to use it, but we do sell amateur apparatus, and some of these concerns doubtless secured this and made their own transmitting outfits, in the belief that this apparatus is licensed for such use.

MR. POPENOE:

We sold twenty-six, along about the first of June, we sold twenty-six.

MR. MILLS:

Well, you gentlemen are just at the threshold of this business.

Now, first presuming that you recognize the rights of composers, authors and publishers, and that you are willing to pay them fairly for the use of their material, who should pay?

A GENTLEMAN:

Who should pay the royalty?

MR. MILLS:

That's what I mean.

A GENTLEMAN:

Well, of course, as I have said, everything is in an embryo state. We do not know what may happen, the Government may step in and do the broadcasting itself for all we know, but supposing that the manufacturer did broadcast for the purpose of selling sets, have you any way to meet that on a royalty basis, have you anything in mind?

MR. MILLS:

Yes, sir. Before, however, we arrive at anything like a basis, whatever figure is fixed must be an

arbitrary figure and the result of a mutual agreement. In the first place, if you recognize our rights, remember that those rights are exclusive.

A GENTLEMAN:

What do you mean by recognition of your rights, a recognition of the copyright law?

MR. MILLS:

Yes, a recognition of the principle that broadcasting is a public performance.

MR. BURKAN:

What you are doing today violates our rights; in other words, broadcasting constitutes a public performance, clearly, we think, for profit, and in order to lawfully broadcast any number copyrighted by a member of the Society, you should first secure the consent of the Society.

MR. MILLS:

Let me read you the language of the law contemplating what may constitute a public performance: "Any method whereby in whole or in part (the copyrighted work) may in any manner or by any method be exhibited, performed, represented, produced or reproduced."

MR. BURKAN:

It is all-embracing, it intends to cover every possible form of public performance, not only on the question of profits. As you will note, there are two provisions, one, subdivision D, with the limitation that the performance must be for profit, and the other that it need not be for profit, which has

been upheld by the Courts since the Shanley case, and whether the performance is for profit or not, so long as it is publicly presented, or for public entertainment, it comes within the restrictions of the law.

A GENTLEMAN:

What I was trying to get at was this, for argument's sake—tell us what your proposition is, what would the cost be to radio, to broadcasting stations?

MR. MILLS:

I think it ought to cost a radio station for license from the Society as at present constituted, a minimum fee of about five dollars per day—and a maximum graded up from that, the minimum fee being fixed for the smallest station serving the smallest probable audience, and the maximum graded up from that.

Take your smallest stations, serving the smallest clientele, fix the fee at five dollars per day, and rate the larger stations in proportion, and we can arrive at approximate figures.

A GENTLEMAN:

But under such circumstances, all other manufacturers selling radio apparatus but not broadcasting, would get the benefit of our fees without paying anything.

MR. MILLS:

I see that clearly. Months ago, when radio was in its infancy, I made to Mr. Popenoe a suggestion that you gentlemen shouldn't sell apparatus, but

should only lease it, because it was clear then that ultimately some provision would have to be made for raising the revenue with which to defray the cost of proper broadcasting, but it has seemed impracticable for you gentlemen to so arrange. I think of course, that the cost of broadcasting should be defrayed by those who receive the entertainment, but this seems impossible of arrangement, because when you once put something into the air, anyone with a set can listen in and you can't stop it, or control it, or charge him for that privilege. At the same time, broadcasting is going to have to be put in the hands of skilled entertainers, men who know how to furnish amusement and entertainment, and it is going to cost a lot of money to do it, and to maintain the service. You have before you as big a problem as is before the theatrical men of the country—to furnish entertainment, and to millions of people. You are going to require the services of skilled purveyors of amusement, and professional talent. That, to me, is your big problem, and how to meet the mounting costs that will be associated therewith.

The minute you solve that problem, the problem of selling sets will solve itself, you won't be able to fill the demand.

The problem of suppressing infringing apparatus, and of bringing about participation of non-broadcasting manufacturers in the expense incident to broadcasting, is purely your own problem, and one in which we are not equipped to advise.

MR. ROSENTHAL:

I have read somewhere, something about the ability of a broadcasting station to so send its material as to restrict anyone they did not want to have hear them, from receiving what was sent.

MR. MILLS:

Up to this time there has been no such development.

MR. EASTON:

At present it is impracticable.

MR. MILLS:

It may be done through control of wave lengths, and certain types of apparatus but that is sometime into the future. In England they license the receiving sets but it seems impracticable to do that in this country, and there seems no way to keep anyone from buying the component parts and constructing a set, it seems a comparatively simple matter.

A GENTLEMAN:

Now, while we are facing all that, what are you going to do?

MR. MILLS:

Get together on some equitable basis that recognizes and compensates our rights, and we will help you to get some real music and some real entertainment into your programs.

MR. ADAMS:

What are we going to do about these other manufacturers that do not broadcast and will not pay royalties; can you suggest some temporary plan?

MR. MILLS:

If they do not broadcast, they do not publicly perform, and we have no claim against them.

MR. ADAMS:

But they reap the benefits of broadcasting, and assume none of the burden of conducting it.

MR. MILLS:

Well, if there is someone else riding on your nickel, I don't know how you are going to make him pay his own fare. I do not think this Society can make him, but if you will suggest any means whereby we can so distribute our charge that the burden will be equally borne by all who benefit through the use of our product, we will be glad to consider such a suggestion.

We know that there is much pirated, bootlegged apparatus, I walk down Sixth Avenue every day and see plenty of it in the windows of the fly-by-night concerns that are cashing in, or trying to, on this craze; the radio press, the cheaper magazines, are full of their bunk advertisements for highly touted junk. In our own industry we once had a sort of a parallel condition, but we remedied it through our trade associations, perhaps you could do the same.

Yet, if a patent is in the public domain, and the manufacturer of that article is not broadcasting, he is not publicly performing, and therefore not amenable to our demands. Suppose the phonograph manufacturer should say "Mills, we are making records and paying you royalties, but there is Jones, who makes phonographs only, and does not make records; he pays you no royalties, yet the phonograph he manufactures wouldn't be any good without our records, why don't you make him pay royalties for the use of our records, or at least share our burden for royalties paid that make the manufacture of his instrument a commercial possibility?",

we couldn't touch the manufacturer of the phonograph, but only the man who mechanically reproduced our copyrights in the form of records.

MR. ADAMS:

But they are getting revenue, while we are paying to you. Supposing receiving apparatus is manufactured without infringing patents, and the Radio Corporation pays you the royalty you ask for broadcasting, and pays based on the number of instruments it sells. The persons who do not broadcast at all still get the benefit by receiving through some other instrument the programs that are broadcasted by the Radio Corporation. I am just trying to get at how you are going to adjust this sort of a situation.

MR. MILLS:

Obviously, everyone that profits from public performance should, in justice, participate in the expense of providing the entertainment, but if, under the law and in practice, there is no way of making them do so, and they will not voluntarily appreciate their obligation, then I am at a loss to suggest how we can enter in to correct the situation. If you can suggest how we may do it, I will be glad to consider the suggestion, and willing to co-operate to see that all bear their fair share of the burden.

We will deliver you the music; I know that, as men with large experience in providing public entertainment we can be of great service to you in solving the problems with which you are confronted, and which, as electrical engineers, are probably pretty foreign to your knowledge and experience.

I know that we can deliver to the broadcasting service of America a service of infinitely greater

value than the sums you would pay us could measure.

MR. WHITE:

Mr. Mills, leaving, aside Mr. Adams' infringers, and the men who are riding on our nickels, and referring to your plan which contemplates payment of five dollars a day for a station with a small audience, and then some maximum on a station with a large audience, I don't think it is possible to determine what the audience served by a station may be.

MR. MILLS:

Not definitely and exactly perhaps, but generally and approximately, yes. Take for example the motion picture business. The country is divided into districts; the population in each district is known. The producer figures the cost of production and profit to be made, and then demands from each section or zone of the country, rentals which will, in the aggregate, make up that sum.

Let us take WJZ for instance, it serves, say—

MR. BURKAN:

To illustrate further, for the zone contiguous to New York State, 14% of the total is the figure fixed, while for the territory adjacent to Denver, I believe it is two percent., and so on.

MR. MILLS:

You produce the picture. Say you want to realize a hundred thousand dollars in rentals. That represents cost plus profit. New England must pay you eight percent., or eight thousand dollars;

New York fourteen percent., or fourteen thousand dollars, and so on for each territory.

Now let us take WJZ, it is likely heard everywhere, one day as far as Sandy Hook, and the next day as far as Edinburgh. As a general proposition however, it is probably clearly heard in New York, Connecticut, Massachusetts, Pennsylvania, New Jersey, and so on. We know what the population in the territory in which it is regularly and reliably heard, is, and thus may arrive approximately at its potential audience.

We hear on our set, on some days, Schenectady, Chicago, Newark, Providence, and one day we heard Savannah. But we always hear WJZ. We would be in his zone undoubtedly, but we probably would not be considered in Savannah's zone.

MR. WHITE:

I don't think you need to worry about that Mr. Mills, because I think sooner or later the Government will establish central stations to serve each district.

MR. MILLS:

Roughly and generally, inasmuch as we are fixing an arbitrary key rate or fee, we have to know measurably or generally here, what the approximate audience of a station is. This, I should think, could be established in conference with a committee representing you gentlemen. We had in mind, as I have stated, a minimum fee of five dollars a day, and I think we could grade stations fairly and accurately from that basis, and then as new stations were added, we could get the information necessary to place them in the proper classification. Is there a better way?

MR. WHITE:

I should say that some part of it could be worked out all right, if we could get each manufacturer to pay his proper share.

MR. MILLS:

Now, on this question of infringing manufacturers, pirates if you please, and as to such manufacturers as might refuse to participate in your expense as broadcasters, I don't know how we can reach them if you can't.

MR. WHITE:

Assuming the manufacturers to be legitimate, but unwilling to participate?

MR. MILLS:

I still don't see how we could control them, they don't publicly perform. It would be up to their sense of business, to encourage the sale of apparatus, to participate as a matter of propaganda, and up to you gentlemen to convince them that they should do so.

MR. WHITE:

At the moment I don't see anything to do but to add this cost to the cost of the apparatus, and endeavor to arrange that all shall participate in the cost of broadcasting, but I wonder if there is any temporary plan that the Society would be satisfied with?

MR. MILLS:

Yes, sir, we will meet you half way on any ground you select, and await any suggestion.

MR. WHITE:

Mr. Mills, anticipating, you assume that broadcasting produces certain revenue, how do you arrive at it, and if you have a way of arriving at it, what percentage do you expect?

MR. MILLS:

I do not clearly understand you. We have not arrived at any definite or specific figure; I have suggested a certain minimum charge, and await any counter suggestion. We don't say that we want one million or ten million a year from radio, we want what is fair, and a just recognition of what we contribute to its success and revenue.

MR. WHITE:

What would you say approximately?

MR. MILLS:

What we have tried to figure in calculating this matter, is what it costs to operate a station, how much time is spent at broadcasting, how much of that time is devoted to music, how many people are served with the entertainment, and in a rough, general way to arrive at some estimate of the amount of receiving apparatus sold. Compare all this with equivalent elements in the motion picture theatre, and I think you will find that my figure of five dollars a day as a minimum fee, rather close to what the circumstances justify.

MR. WHITE:

The motion picture theatre earns a definite amount, and you get a percentage of its profits, as I understand it.

MR. MILLS:

You have somewhat misunderstood. We do not get a percentage of profits, we get a certain fixed sum whether profits are earned or not, we get ten cents per seat per year.

MR. WHITE:

But, I think you will admit that broadcasting presents a different case.

MR. MILLS:

In some respects yes, but as to publicly performing for purposes of profit, no. There is a difference in that the receipts of the motion picture theatre can be definitely established, and allocated to the particular theatre, whereas to broadcasting, this is not the case.

Let us say that the average motion picture theatre has one thousand seats, and thus pays one hundred dollars a year. It serves say two thousand people a day.

Now, how many people does a broadcasting station serve, and what volume of entertainment does it furnish—that is, how much time? Probably no station so few as a thousand, but out in Dakota or Nevada that may be the case, but how many does WJZ serve? Now if a motion picture theatre serves two thousand people a day, and pays one hundred dollars a year, how many people does WJZ serve every day, and what should it pay? That gives us at least some sort of a basis to start figuring from, something definite and calculable.

MR. TOWNLEY:

Mr. Mills, may I say a word at this juncture, in comment from a somewhat different angle? I represent the Westinghouse Electric and Manufacturing Company.

I want to say at the beginning that we are in sympathy with what you are trying to do. We do not come here in a spirit of trying to combat your attitude, because we believe in the enforcement of law, and the protection of all legal rights, and we recognize that some of the composers and authors are not in a position to individually fight their battles, and are entitled to unite for their mutual protection.

But, we would like to have you appreciate the situation from the manufacturer's standpoint for a moment, on the general proposition that you can't get blood out of a stone. A good deal has been said about the payment of royalties by theatres for the right to present songs, but each member of a theatre's audience pays an admission, whereas the radio audience merely pays for its receivers, either to our company or some other company, and they do not thereafter pay any admission fee or further charge.

Now, the Westinghouse Company began this broadcasting enterprise some time ago in an experimental way at Pittsburg, and later on expanded it until four broadcasting stations were in operation, as you probably know, and it has been a very grave question with us whether it was a good thing or not.

In other words, we had assumed an obligation which would be a continuing obligation, and which might possibly develop into more of a proposition than we could digest.

Mention has been made here of the fact that radio is in the stage of its first development; the regulations of the Government have not yet been definitely fixed, there are many questions relative to patent infringement, who may or may not use certain apparatus, and the expense incident to these matters has grown to be a very considerable item, so that it is far from a settled proposition that our Company is permanently and regularly in the broadcasting business. My own opinion is, and my hopes are, that we are in it for good, and that a way will be found to continue. But, at the present time the item of expense looms very large, and it is questionable whether at this time the returns justify it.

Now, I am not attempting to discuss the legal side of this matter at all. I am not a lawyer, and I do not pretend to know anything about the justice of your claims, and our counsel has not passed on the question, so I am not disputing your explanation of what your rights are. I am not attempting it because I do not know, and I am not disputing it. I am assuming that it would be decided in the way that you say it would be decided, and that you have these rights. Our disposition in all matters of that kind is to meet them amicably, and we do not like to go into litigation unless we are sure the other fellow is wrong, because we usually find when we sit down with the other fellow that he has plenty of sense and of the milk of human kindness. Reasonable men can always get together.

We are confronted with the same question that has confronted a good many other companies and manufacturers. We are faced with costs in a good many instances that we do not earn money enough

to pay, and that is the case with the broadcasting situation at the present time. I am sincere in saying to you that I would be apprehensive in approaching the executives of our company with a proposal to make expenditures to defray additional costs for the broadcasting stations, because I apprehend that any comprehensive scheme that would be satisfactory to your Society would add excessively to the already considerable burden of this particular expense.

I regard it as somewhat unfortunate for ourselves and for the general enterprise of broadcasting, that this question should have come up at just this time, for the reason that the policy and method, and equal rights of broadcasting stations, have not yet resolved themselves into very definite shape.

While we have letters from remote corners of the globe commenting upon the material that has been broadcasted, it is still very difficult to tell just what should be broadcasted in the way of songs, and I should regard it as of very great practical difficulty to arrive at a plan which we would think would be satisfactory to you. It would also be difficult to arrive at what we would think fair.

In our expense incident to broadcasting up to date there has been no item for the payment of performers. A great many prominent, well-known performers, both of vocal and instrumental music, have given their services free, in fact instead of having to solicit them, we are solicited by them; why I cannot say, unless it is because of the novelty, and of the advertising it gives them. You gentlemen are probably more familiar with their motives than we, but it is a fact that whatever the motive be, up to date we have paid nothing for performers.

You can see as readily as I, that if we were now

to turn around and make an arrangement with your Society to pay royalties for the use of music, it would not be very long before the performers would say: "If you pay for the music why should you not pay for the performers?" The performer certainly has to have the music, and the music would not be used without the performer.

This would create a situation that would add to our expense not only what we paid you, but of a larger amount for the artists, because as you have so very well said, the success of continuing this enterprise, this art, this undertaking, depends upon the character of the programs that we put out, on the material. It must be good. So there you are.

From our standpoint, and I am speaking from our own standpoint entirely—I am not attacking your legal right—your justice, but from our own standpoint it is most unfortunate that this matter has come up at just this time, with the prospect that we shall have to come to some sort of an arrangement with your members. I would have hoped that the question could have been kept in suspense; I am not asking you to do this, but I am saying that we would have hoped that it could have been held in suspense until a lot of these matters which have been touched upon today could become stabilized; for instance, until we knew what the Government's regulations are going to be; to what extent regulations govern different wave lengths, what restrictions placed on interfering stations, until our patent rights have been determined, until all of these and other questions have been solved, until the development and improvement of the radio art, which is as yet in its earlier stages, but of which certain improvements not yet

announced give promise, until it is settled so that we could see what the situation may be with regard to locking up instruments and using some measures for our own protection.

So, you will see that we are considerably embarrassed by the fact that this question has come up at this time. We would say that while five dollars a day is not a tremendous sum, that is, as a minimum for a small station, when you talk about the hundreds of thousands of people that may hear some of these stations, and the increased number of people who may be expected to install sets, and propose to proportion your charge accordingly, that would run up into a very large sum of money.

The uncertainty of the situation is also embarrassing. So I came here to-day to get your views and I have listened with much interest. I compliment you on the accuracy with which you have stated the case, and I compliment you on your attitude. I came here to listen and with the unavoidable sense that there was a very serious problem before us, which might make a lot of trouble if it were necessary, or you thought it were necessary, to force it to an immediate solution.

We do not believe in dallying with things when they come up, but if you feel that the interests of your Society are such that you must insist that some arrangement be immediately arrived at without considerable discussion, I have a great fear that it will cause a lot of embarrassment.

I do not know anything about the music publishing business. If there is any business that I know less about, I do not know what it is. I do not know what would be the result if we were obliged to say to our staff who look after the program: "You must not use licensed music, whether your program

is satisfactory or not." There is a lot of old music that could be publicly performed without incurring any liability for license, and it may be that we would be confronted with that alternative, which would be very dissatisfying, but if we are confronted with it, that is, either give up the broadcasting or give up the music that is protected by your members, there are a number of things that we might have to do.

So, I will close my remarks by saying that I hope you will continue to exhibit the broadminded study of the matter which you have in your conversation here to-day indicated has been pursued, in your further consideration of the matter, and won't conclude that it is only a one-sided proposition.

MR. MILLS:

I thank you very much for your remarks. They have been most excellent, to the point and clearly expressed. They will be helpful to us. Has the secretary of the meeting your name?

MR. TOWNLEY:

C. Townley, of the Westinghouse Electric and Manufacturing Company.

MR. SONNECK:

Mr. Mills, I am very glad that I had the opportunity to hear Mr. Townley, because we, not being members of your Society, have asked ourselves, what are the difficulties of these radio people? Evidently the situation is not quite clear. Both parties would like to come together and do something, but the matter is not clear at all as to how they can do it. Now, of course, the problem of the popular publisher, the popular composer, in certain

respects is different from the problem, for instance, which Mr. Fischer and ourselves have in our catalogs. Of course, a catalog like that of G. Schirmer, Inc., contains not only old music, but contains also new music, and I am very happy to say that in the programs which you give there are quite a number of our copyrights, which we control absolutely. But, we have felt, quite aside from the legal aspects, and apart from consideration of this larger and more vital matter here discussed, that perhaps you could in one way go a little further than you are now going, and meet us. I have noticed for instance, your programs in the newspapers, in which the title only of a composition to be played is stated.

That may be all right for the popular music, but it is not sufficient for music such as the standard publishers publish. Looking at your performance as a sort of a concert performance, let us call it that way, what happens in the concert of music such as we represent? The programs and all publicity carries not only the title of the composition, but as well the name of the composer, author and publisher. We feel that you are really injuring us in printing merely the title of the song, and as far as we are concerned it means nothing to us if you do not also mention the composer, and you should give out this information as well in the interests of the musical community, and as I said on one occasion to the representative of one of the companies here present, "We standard publishers feel that the least you could do while this whole matter of royalties or whatever you want to call it, is in abeyance, is to announce in every case when you are performing standard music, not only the title, but the composer", and the attitude of G.

Schirmer, Inc., in this whole matter is, until it has been threshed out and settled to the satisfaction of all concerned, that while we prefer as standard publishers not to inject the element of royalties until that matter has been settled by such able counsel as Mr. Mills for his Society, and by you gentlemen, and then probably we might come in some time by a special regulation, we should appreciate it if in every case where you broadcast our music, and I speak for the other standard publishers too I am sure, that you at least go through the form of asking our permission.

Mr. MILLS:

May I say Mr. Sonneck, and gentlemen, in behalf of the radio people, that we listen in here every day, and it seems to us their invariable rule not only to announce the name of the composition being played, but as well the names of composers and authors, and of the artist rendering the composition.

Mr. SONNECK:

Yes, but they do it only when it comes to new songs.

Mr. MILLS:

No gentlemen; we hear it here every day, the full and detailed announcement, as for instance, "Rubenstein's Melody in F", by so and so, played by so and so, in fact a full and complete announcement, but of course, not including the publishers' name.

Mr. SONNECK:

Well, they have not done so enough, but I would think Mr. Mills, whether or not it always happens, that you would agree that it is highly desirable.

Mr. MILLS:

It is indeed highly desirable, and should be the invariable rule, both as to announcements made before broadcasting, and programs as printed in newspapers or other publicity.

Mr. GRISWOLD:

Mr. Mills, I appreciate very much the opportunity of listening to this, and there are a few things that I might say that may prove helpful.

We, of course, agree with the rest of you that the way to make radio broadcasting a success is to give programs of the best possible nature, and if that involves material in which you are interested and upon which royalties must be paid, royalties ought to be paid if the law requires and justifies it, but some way must be found in which to eliminate much of the junk that is now being broadcasted.

And, who is going to pay the bill? The whole matter is becoming more and more expensive, coming to have more and more requirements, and so far no good commercial way has been found to pay the bill now, and it is not at all certain that we will find a way. We might have to go on and establish station after station, and then selling set after set in pace with the natural growth of communities, saturate the market, whereas, we would be continually and permanently faced with the necessity of paying more and more for artists and royalties for music, what would we do when we

had sold all the sets that could be sold, to secure the revenue with which to take care of these continuing expenses?

We would then have to discontinue broadcasting; that is something that none of us would want to do, but we are all seeking some way to commercially support the broadcasting, and we believe that the people who receive this entertainment ought to pay, ought to support the activity. It is the people that receives the benefit, just as the people who go to a show ultimately pay the royalty bill. There seems at present no practical way to arrange it. England has done it, but this country has not yet found a way. It is a question now before us and that apparently will be for a while.

We are not selling transmitting stations, we are not selling in general, receiving sets, which is the big source of revenue in the radio business.

We are maintaining a station for the service of others, and the only way we can maintain this station is to charge others for its use. Our idea was to make available a service in any certain area, and provide the equipment in that area for anyone to use who wanted to broadcast, and not leave only to a certain few all opportunity to do broadcasting. This is only a step toward a commercial solution.

Whether this experiment is going to be successful, whether there will develop sufficient business to warrant it, nobody yet knows, but at the moment all of us interested in radio are confronted with the question "Who is going to pay the bill?"

Now I do not believe, and I think Westinghouse will agree, that they would desire to indefinitely continue broadcasting and bear the entire expense of it from the profit of such apparatus as they might sell. Certainly they would not want to do it un-

less the sale of receivers could be controlled, which, so far has been impossible.

I will not say anything definite, the whole thing is too new, but I will say that we will do whatever is right, now and at all times. As Mr. Townley has said, we are faced with a rather difficult proposition in that we are starting with a brand new thing, and because all of us together do not yet know where we are, and because we are so situated in this country that it does not seem possible to get it on the proper commercial basis.

Certain manufacturers will for some time reap certain benefits from the sale of equipment. You will likewise remember that they do that without any expense as to broadcasting; and the profits which those of us who do broadcast will realize from the business will in some cases not reimburse us for the tremendous amount of money spent in development of this thing.

It is going to be a long, long road that we will travel before we are even square with the game, so that we have a difficult problem to study in working out the proposition to a commercial basis.

I believe we are going to find a way to establish broadcasting, to give the public the kind of stuff it ought to have, and if the music which you represent constitutes a part of that program we are going to get it, and if the law provides that we must pay you for it, we will pay.

MR. MILLS:

On the point that Mr. Townley brought up about our delay in taking this matter up, and that now is an embarrassing time for it to be brought forward, I want to say that from the time WJZ started broadcasting we have been studying the question, mull-

ing it over, and awaiting developments. We made no effort to interfere or strangle its development, we were glad to see it go forward. We have deliberately held back a year before saying anything, and we have not called you together here today for the purpose of delivering an ultimatum. We are not now saying that you must meet our demands or as an alternative face us in court tomorrow.

We have told every licensed broadcasting station in the country of our rights, and we have suggested to them that they apply to us for a license to publicly perform our material. To all who have applied we have granted temporary, revocable licenses, without any charge whatever, pending the outcome of negotiations such as those which are under way here today.

We did inform those stations that such of them as had not, by September 25th, applied for such licenses, would then be complained of if they continued to infringe our copyrights.

And now, we are not delivering any ultimatum, but we are saying that we consider these rights as legally and truly ours, and demanding that all of you who publicly perform our compositions by broadcasting shall secure this license which is available upon your application, and which for the present does not cost you anything, and perform our compositions only under its authority, until the moot questions have been threshed out and settled.

The conditions in our license are reasonable; they merely require that prior to broadcasting any composition included in the catalog of the Society, an announcement shall be made that "This composition is publicly broadcasted by permission of the American Society of Composers, Authors and Publishers." In some cases, to save time, we have

agreed to one announcement at the beginning of a program, something to this effect: "All of the compositions in the following program which are included in the catalog of the American Society of Composers, Authors and Publishers, are broadcasted by its permission."

Now, may I compare, in further response to Mr. Townley, the patron of a moving picture theatre with the owner of a receiving set? In the one case the patron pays an admission fee; in the other case the owner first buys a set, from the sale of which profit flows, and then he is thereafter constantly buying batteries, materials, accessories of one sort and another, and there must be a constant flow of profit from that source, increasing as the number of sets installed increases. The owner of a set is much like the owner of a Ford; he starts with that and winds up with a much more expensive car. The owner of a receiving set is at first content with an inexpensive apparatus, but he soon wants a loud speaker, a lot of amplifiers, and what not. Our installation here first cost us about a hundred and fifty dollars, then a hundred more, and then a couple hundred more, and I am in daily fear that someone will come in here and show us some new and fancy apparatus that will cost us an additional five hundred or so.

The radio audience is constantly and indirectly, paying its admission fee for the entertainment it receives, and it must continue doing so as long as it receives; whether it is paying to the manager of the theatre so to speak, or to the gallery doorman who pockets the money, comparing the legitimate manufacturer of apparatus with the pirate, I do not know, but he is paying.

On the question of limiting your programs to unlicensed, or non-copyright music, I am reminded of a hotel man out on the Coast who said that "Nearer My God To Thee," a non-copyright, if properly jazzed was prettier than any of the modern tunes. He might find a few to agree with him, but not anything like a majority.

There is considerably less than one percent. of the music of the world contained in the catalog of the Society. You could, if you wished, confine your program to music which the Society does not control, and have plenty of music, but you would not have the music that is in demand, that the people want to hear, and that will contribute more than any other single element to the success of your broadcasting. I think you will never make such a mistake as to determine to limit your programs to non-copyright, or unlicensed music.

Again I say, we have no intention of presenting an ultimatum today. That is not what we have in mind. What we do have in mind, as Mr. Townley suggested, is to discover how much of the milk of human kindness, how much reasonableness, there is in all of us, and use that as a basis for getting together justly and fairly to all concerned.

We are confident that you gentlemen are going to lend your support to the encouragement of the art of music in this country to the extent contemplated by law and upon the very reasonable basis that you will find us willing to establish; by contributing to music a small proportion of the profits that flow to you from broadcasting, or the sale of receiving apparatus, or sending stations. We only want what is decent and right, no more, and certainly no less, and we want it from the people who should pay it.

Now, I have suggested a minimum rate which I think you gentlemen should consider. That rate has not been discussed with the Society, nor approved by it. It is my individual, personal, idea and suggestion. It is a point, as I have said, to talk up from or down to. If it is exorbitant or unreasonable, then it is, and discussion will develop that point. Show me that it is and we will gladly recede to a reasonable position. On the other hand, if it is unreasonably low, let us develop that point too, and put it just where it ought to be. This is all absolutely on the level, and that is the way we want to handle the whole thing.

Or, if it is your preference, we will give you a battle in court, but I think we can settle the whole matter, as "reasonable men," as Mr. Townley says, in a fair way, and I think you gentlemen should report to your executives that our position is not to embarrass you needlessly.

We want to see ten or fifteen million receiving sets in use, we want to see you prosperous, we want to see radio develop into the great service it may become.

Will someone make a suggestion now, as it is getting late, as to the next step we might take in developing this matter? We have plenty of time in which to talk it over; or for you to do that among yourselves, but at the same time we do not want to dilly dally. In the interim I think each of you that has not done so should apply to the Society for a license.

Mr. BURKAN: ASCAP

I should like to say a word here, as to the time that we have waited before taking this matter up with you gentlemen. When phonograph records

were first introduced, there was a parallel situation. No royalties were paid to the proprietors of copyrights which were reproduced on records. Several years elapsed before a suit to protect musical copyrights against such infringement was brought, or before an effort was made to clarify the law so as to clearly protect copyright proprietors' rights in this matter.

When the subject did come up the Courts did not hesitate to point out that for years we had consented to the reproduction of musical works without payment of royalties, and by the lapse of time had almost created a situation wherein we had practically no standing in the enforcement of these rights.

It took four years to have the Act of 1909 passed, and as much because of the copyright proprietors' previous acquiescence in unauthorized use of his material, as for any other reason.

Now, on this radio matter, you understand we are profiting by our experience in the past, and are not going to permit ourselves to get into a situation where the Courts may say "You have slept on your rights, if you are given them by the statute, why have you not asserted them?"

A GENTLEMAN:

Mr. Mills, I would suggest that you send each of us a copy of the minutes of this conference, let us submit them to our executives, give us a chance to talk it over, and then have another meeting for the purpose of arriving at a final conclusion.

MR. MILLS:

We will do that as a matter of course, that is, send you the minutes; you will receive them as soon as we can get them printed.

MR. GRISWOLD:

Now, on the question of delay, can we not come to some agreement regarding that?

MR. BURKAN:

All of these performances that you gentlemen are giving, should be under license from us, if they include compositions within control of the Society. Do you not think gentlemen, that in order to save time, and bring this matter to a speedy conclusion, that we might initiate a suit? I don't mean a suit with the intention of punishing someone, or securing material damages, but more in the nature of a friendly suit for the purpose of testing out these questions. Suppose then, that we bring such a suit, upon an agreed statement of facts—for I presume we could agree on the facts, and simply fight out the construction of the statute?

QUESTION:

Someone told me that a suit had been brought in the middle West. Is that correct?

MR. BURKAN:

No. Mr. Mills had some conference, but no suit has been brought.

QUESTION:

Would it not be advisable to hold any such suit up until the next time, when we have another meeting?

MR. BURKAN:

All right, that is perfectly satisfactory.

MR. MILLS:

Now, is it the consensus of opinion here that we will within a reasonable time, furnish each of you with a copy of the minutes of this meeting, and then, in a suitable period, call another conference, to which you will come prepared to speak on behalf of your people and definitely commit yourselves?

A GENTLEMAN:

I think it is, but I do not think we can come with a definite proposal. We can come here and attempt to try to get together.

MR. GRISWOLD:

What would you consider a reasonable time?

MR. MILLS:

Say twenty days after receipt of the minutes?

MR. GRISWOLD:

I think that would be all right.

MR. MILLS:

Is there anything else that anyone here present wishes to say, or is there anyone present who has not been heard who now desires to be?

In conclusion, Gentlemen, I want to say in behalf of the American Society of Composers, Authors and Publishers, that we sincerely appreciate your attendance here today, the courteous and patient attention that has been given to the matters under discussion, and the fair spirit in which you have approached them, and I am confident that we will finally get together upon a basis that will be fair and just to all alike.

The meeting is adjourned.



THE LIBRARY OF THE
UNIVERSITY OF
TORONTO
JAN 1 1974